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March 9, 2022

Via ECF

Honorable Paul G. Gardephe
United States District Court
Southern District of New York
40 Foley Square
New York, New York 10007

Re: *Phillips et al. v. Porter et al.*, 21-CV-09178 (PGG)

Dear Judge Gardephe:

I am an Assistant Corporation Counsel in the Office of the Corporation Counsel of the City of New York, Hon. Sylvia O. Hinds-Radix, attorney for the Defendants in the above-referenced action. I write, with the consent of Plaintiff's counsel, and pursuant to Rule 5.2(d) of the Federal Rules of Civil Procedure, to respectfully request leave to file under seal the certified copy of the administrative record underlying this action, which is brought pursuant to the Individuals with Disabilities Education Act ("IDEA").

As an initial matter, the administrative record reflecting the transcripts of the hearings before the Impartial Hearing Office and the State Review Office, as well as exhibits, educational records, and medical records are replete with confidential information, including the name, date of birth, and other pedigree information of the minor student, S.H., on whose behalf this action is brought. This information should not be made public in compliance with Rule 5.2(a). *See* Fed. R. Civ. P. 5.2(a).

Additionally, the record contains information describing S.H.'s medical history and disabilities, as well as the student's educational progress and history. These materials are confidential under the IDEA and the Family Educational Rights and Privacy Act ("FERPA"). 34 C.F.R. § 99.3 (defining personally identifiable information under FERPA), § 300.32 (including a "list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty" as personally identifiable information under the IDEA).

Moreover, as the underlying administrative proceeding is presumptively closed to the public pursuant to 34 C.F.R. § 300.512(c)(2), all documents recounting the proceeding should

themselves be deemed confidential. *Id.* (permitting parents to choose whether a hearing is open or closed to the public). “For these reasons, courts in this Circuit have routinely allowed administrative records underlying IDEA cases to be filed under seal to protect the privacy interests of minor child plaintiffs.” *L.B. v. New York City Dep’t of Educ.*, 15-CV-3176, 2015 U.S. Dist. LEXIS 127081, *2 (S.D.N.Y. Sept. 22, 2015) (citing *C.L. Scarsdale Union Free Sch. Dist.*, 913 F. Supp. 2d 26, 30 (S.D.N.Y. 2012); *A.M. ex rel. Y.N. v. New York City Dep’t of Educ.*, 964 F. Supp. 2d 270, 277 (S.D.N.Y. 2013)).

For the reasons above, Defendants believe that the administrative record is appropriately filed under seal pursuant to *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 120 (2d Cir. 2006) (noting that countervailing factors weighing in favor of sealing include, *inter alia*, the privacy interests of those resisting disclosure). In particular, Defendants submit that the *Lugosch* standard is met because protecting S.H.’s privacy interests in keeping confidential the minor student’s education and medical history constitutes a “compelling reason” to seal the record outweighs the public’s interest in access. *Lugosch*, 435 F.3d at 121 (countervailing factors include, among others, the privacy interests of those resisting disclosure).

Accordingly, the Defendants respectfully request, with consent of Plaintiff’s counsel, leave to file the certified administrative record in this action under seal.

Thank you for Your Honor’s consideration of this request.

Respectfully,


/s/ _____
Wynee Ngo
Assistant Corporation Counsel

cc: **Via ECF**
All counsel of record.

MEMO ENDORSED:

The application to seal the administrative record is granted, because of the references to the minor's name and disability.

SO ORDERED.



Paul G. Gardephe
United States District Judge
Dated: March 10, 2022